



April 3, 2001

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## ENGROSSED SENATE BILL No. 104

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DIGEST OF SB 104 (Updated March 28, 2001 4:25 PM - DI 106)

**Citations Affected:** IC 16-37; IC 34-10.

**Synopsis:** Right to pauper counsel in civil actions. Provides for a \$2 civil indigent fee to be added to the cost of a birth certificate. Eliminates the general duty of a court to provide an attorney for an indigent person in a civil action. Establishes a civil indigent fund for each county. Gives a court the discretion to appoint an attorney for an indigent person in a civil action. An attorney appointed to represent an indigent in a civil action may be reimbursed from the civil indigent fund or from money appropriated to the court. Establishes procedures for the disbursement of money from the civil indigent fund.

**Effective:** Upon passage.

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### Kenley

(HOUSE SPONSORS — DVORAK, STEELE)

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January 8, 2001, read first time and referred to Committee on Judiciary.  
February 22, 2001, reported favorably — Do Pass.  
February 26, 2001, read second time, amended, ordered engrossed.  
February 27, 2001, engrossed. Read third time, passed. Yeas 49, nays 0.

#### HOUSE ACTION

March 12, 2001, read first time and referred to Committee on Judiciary.  
April 2, 2001, amended, reported — Do Pass.

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ES 104—LS 6034/DI 51+



April 3, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## ENGROSSED SENATE BILL No. 104

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A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-37-1-9 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A local  
3       health department may make a charge under IC 16-20-1-27 for each  
4       certificate of birth, death, or stillbirth registration.

5       (b) If the local department of health makes a charge for a certificate  
6       of death under subsection (a), a one dollar (\$1) coroners continuing  
7       education fee must be added to the rate established under  
8       IC 16-20-1-27. The local department of health shall deposit any  
9       coroners continuing education fees with the county auditor within thirty  
10      (30) days after collection. The county auditor shall transfer  
11      semiannually any coroners continuing education fees to the treasurer  
12      of state.

13      (c) **If the local department of health makes a charge for a**  
14      **certificate of birth under subsection (a), a two dollar (\$2) civil**  
15      **indigent fee must be added to the rate established under**  
16      **IC 16-20-1-27. The local department of health shall deposit the civil**  
17      **indigent fee in the civil indigent fund (IC 34-10-1-2) not later than**

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**thirty (30) days after collection. Fees deposited in the civil indigent fund do not revert to the state.**

**(d)** Notwithstanding IC 16-20-1-27, a charge may not be made for furnishing a certificate of birth, death, or stillbirth registration to a person or to a member of the family of a person who needs the certificate for one (1) of the following purposes:

(1) To establish the person's age or the dependency of a member of the person's family in connection with:

(A) the person's service in the armed forces of the United States; or

(B) a death pension or disability pension of a person who is serving or has served in the armed forces of the United States.

(2) To establish or to verify the age of a child in school who desires to secure a work permit.

**SECTION 2. IC 34-10-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:** Sec. 2. **(a)** If the court is satisfied that a person who makes an application described in section 1 of this chapter does not have sufficient means to prosecute or defend the action, the court: ~~shall~~

(1) ~~shall~~ admit the applicant to prosecute or defend as an indigent person; and

(2) **may** assign an attorney to defend or prosecute the cause.

**(b)** All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

**(c)** **A civil indigent fund is established for each county in Indiana. Money deposited in the civil indigent fund may be used only for the payment of the reasonable attorney's fees, costs, and expenses of attorneys assigned to represent indigent persons under this section. Funds in the indigent civil fund may be disbursed in accordance with rules adopted by the majority of judges having jurisdiction over civil cases in a county.**

**(d)** The reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under this chapter shall be paid from the civil indigent fund under subsection (c) or from money appropriated to the court:

(1) appointing the attorney, if the action was not transferred from another county; or

(2) from which the action was transferred, if the action was transferred from another county.

**SECTION 3. An emergency is declared for this act.**



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## COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 104, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 104 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 2.

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## SENATE MOTION

Mr. President: I move that Senate Bill 104 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Page 1, line 1, delete "THE FOLLOWING ARE REPEALED" and insert "IC 34-10-1-2 IS AMENDED TO READ AS FOLLOWS".

Page 1, line 2, delete "IC 34-10-1; IC 34-10-2." and insert "Sec. 2. **(a) Subject to subsection (d),** if the court is satisfied that a person who makes an application described in section 1 of this chapter does not have sufficient means to prosecute or defend the action, the court ~~shall~~ **may:**

- (1) admit the applicant to prosecute or defend as an indigent person; and
- (2) assign an attorney to defend or prosecute the cause.

**(b)** All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

**(c) A civil indigent counsel defense fund is established for each court with civil jurisdiction in Indiana. Money appropriated to a court's civil indigent counsel defense fund may be used only for the payment of the reasonable attorney's fees, costs, and expenses of attorneys assigned to represent indigent persons under this section.**

**(d) The court may order the:**

- (1) payment of compensation to; or**
- (2) reimbursement of costs or expenses incurred by;**

**attorneys assigned to represent indigent persons under this section only to the extent that money has been appropriated to and is available in the court's civil indigent counsel defense fund.**

**(e) A political subdivision with a court may appropriate money to the court's civil indigent counsel defense fund only after the court has complied with this subsection. The court shall publish notice of the court's request for an appropriation in accordance with IC 5-3-1. The notice must report the amount of the proposed appropriation and the amount expended from the court's civil indigent counsel defense fund in the immediately preceding calendar year. A court's notice under this subsection may be combined with the notice of another court. After the notice is published, the judge of the court shall meet with the fiscal body of the political subdivision in a public meeting. The judge shall present to the fiscal body a summary of the information contained**



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**in the published notice and discuss with the fiscal body the use of money in the court's civil indigent counsel defense fund. After a court has published the notice and met with the fiscal body, the political subdivision may appropriate money to the court's civil indigent counsel defense fund for use in the next calendar year. The appropriation must be adopted by the fiscal body of the political subdivision before the time specified in IC 6-1.1-17-5 for the adoption of the political subdivision's annual budget."**

(Reference is to SB 104 as printed February 23, 2001.)

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 104, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 16-37-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A local health department may make a charge under IC 16-20-1-27 for each certificate of birth, death, or stillbirth registration.

(b) If the local department of health makes a charge for a certificate of death under subsection (a), a one dollar (\$1) coroners continuing education fee must be added to the rate established under IC 16-20-1-27. The local department of health shall deposit any coroners continuing education fees with the county auditor within thirty (30) days after collection. The county auditor shall transfer semiannually any coroners continuing education fees to the treasurer of state.

**(c) If the local department of health makes a charge for a certificate of birth under subsection (a), a two dollar (\$2) civil indigent fee must be added to the rate established under IC 16-20-1-27. The local department of health shall deposit the civil indigent fee in the civil indigent fund (IC 34-10-1-2) not later than thirty (30) days after collection. Fees deposited in the civil indigent fund do not revert to the state.**

**(d)** Notwithstanding IC 16-20-1-27, a charge may not be made for furnishing a certificate of birth, death, or stillbirth registration to a person or to a member of the family of a person who needs the certificate for one (1) of the following purposes:

(1) To establish the person's age or the dependency of a member of the person's family in connection with:

(A) the person's service in the armed forces of the United States; or

(B) a death pension or disability pension of a person who is serving or has served in the armed forces of the United States.

(2) To establish or to verify the age of a child in school who desires to secure a work permit."

Page 1, line 2, delete "Subject to".

Page 1, line 3, delete "subsection (d), if" and insert "If".

Page 1, line 5, delete "court" and insert "court:".

Page 1, delete line 6.

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Page 1, line 7, after "(1)" insert "**shall**".

Page 1, line 9, after "(2)" insert "**may**".

Page 1, line 13, delete "counsel defense".

Page 1, line 14, delete "court with civil jurisdiction" and insert "**county**".

Page 1, line 14, delete "appropriated to a" and insert "**deposited in the**".

Page 1, line 15, delete "court's".

Page 1, line 15, delete "counsel defense".

Page 1, line 17, after "section." insert "**Funds in the indigent civil fund may be disbursed in accordance with rules adopted by the majority of judges having jurisdiction over civil cases in a county.**".

Page 2, line 1, delete "The court may order the:" and insert:

**"(d) The reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under this chapter shall be paid from the civil indigent fund under subsection (c) or from money appropriated to the court:**

**(1) appointing the attorney, if the action was not transferred from another county; or**

**(2) from which the action was transferred, if the action was transferred from another county."**

Page 2, delete lines 2 through 26.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 104 as reprinted February 27, 2001.)

STURTZ, Chair

Committee Vote: yeas 9, nays 1.

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